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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,933	10/16/2003	John Gavin MacDonald	KCX-665 (19232)	4589

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EXAMINER	
SILVERMAN, ERIC E	

ART UNIT	PAPER NUMBER
1618	

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08/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/686,933	MACDONALD ET AL.	
	Examiner	Art Unit	
	Eric E. Silverman	1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 July 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *31,35-48 and 50-53* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *31,35-48,50-53* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 31, 35-48, and 50-53 are pending in this action. The rejections below represent all rejections currently pending in this application. Any rejections discussed previously and not mentioned below have been withdrawn.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 31, 38, and 43-47 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 40, 41, 47-53 of copending Application No. 10/686,938 for reasons of record. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 31, 43, 50, and 53 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-35 of U.S. Patent No. 7,141,518 for reasons of record.

Applicants have previously stated that a terminal disclaimer will be filed over both the 938 application and the 518 patent when the claims are otherwise in condition for allowance. Until receipt of acceptable terminal disclaimers, these rejections will be maintained.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 31, 35-43, 47, 49, 50 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1 186 854 to Honda in view of US 2002/0006425 to Takaoa et al.

The teachings of Honda have been discussed previously.

What is lacking is a teaching of instantly claimed silica particles.

Takaoa teaches the use of SNOWTEX-AK for removing odors. SNOWTEX-AK is a type of alumina coated silica that reads on the silica particles of the instant invention (see page 6 and example 2 of instant specification)

It would have been prima facie obvious to a person of ordinary skill in the art at the time of the invention to use the SNOWTEX-AK of Takaoae as the odor absorber either in addition to or in place of the particles of Honda. Obviousness stems from the

notion that it is obvious to combined materials recognized as useful for the same purpose in order to achieve that identical purpose. The instant invention is no more than the addition of a recognized odor-absorbing particle to the substrate of Honda, which also uses odor absorbing particles. Obviousness also stems from the notion that it is generally obvious to substitute elements that are recognized as performing the same function. Thus it would be obvious here to replace Honda's particles with the SNOWTEX-AK of Takaoa, as both are recognized as odor absorbing agents.

Claims 1-45, and 49-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honda in view of Takaoa as applied to claims 31, 35-43, 50 and 53 above, and further in view of WO 03/025067 to Beaverton.

What is lacking from Honda and Takaoa is:

1. The absorbent article having the various components of claims 44 and 45. These are understood to be a general description of a diaper.

2. The paper web substrate of claim 51.

3. The nonwoven web substrate of claim 52.

Beaverton's teachings have been discussed previously. Importantly, Beaverton teaches articles that may be treated with odor removing nanoparticles, such as paper webs and nonwovens and diapers (cols 8, 9, claim 17).

It would have been prima facie obvious to a person of ordinary skill in the art at the time of the invention to use the nanoparticle materials to make the articles of Beaverton. Motivation flows from the recognition that Honda/Takaoa systems are

useful for the same purposes as Beaverton's, namely making articles that remove undesirable odors.

Claims 31, 35-43, 47, 50 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honda and Takaoa as applied to claims 31, 35-43, 50 and 53 above, and further in view of US 5,762,643 to Ray et al.

What is lacking in Honda and Takaoa is a facemask.

Ray teaches that absorbent articles having good odor removing abilities (col. 5, liens 56-64) can be used as facemasks (figure 9, descriptions thereof).

It would have been prima facie obvious to a person of ordinary skill in the art at the time of the invention to make facemasks out of the absorbent articles of Honda and Watanabe. Obviousness stems from the Ray's recognition that the Honda/Watanabe articles would be useful for this purpose.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric E. Silverman whose telephone number is (571)272-5549. The examiner can normally be reached on Monday to Thursday 7:00 am to 5:00 pm and Friday 7:00 am to noon.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571 272 0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric E Silverman/
Examiner, Art Unit 1618